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Petition for rulemaking to amend the definition of “Firearm frame or receiver”

Everytown for Gun Safety, the country’s largest gun violence prevention organization,¹ submits this petition for rulemaking in accordance with 5 U.S.C. § 553(e), because American communities face a clear and present danger from untraceable firearms commonly known as “ghost guns.”

Criminals, domestic abusers, minors, and gun traffickers are taking advantage of a regulatory failure that has allowed them to readily obtain the core building blocks of firearms—the frame, for building a handgun, or the receiver, for building a long gun. The Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) has chosen not to regulate frames and receivers even when those frames and receivers are nearly ready to be used in fully functioning firearms. As a result, these core building blocks, as well as complete, do-it-yourself gun-making kits, can be ordered online or picked up at gun shows or retailers *without a background check* and then quickly and easily assembled into operable weapons at home. Compounding the problem, guns made with these unregulated building blocks are untraceable because, unlike firearms made by gun manufacturers, neither the building blocks nor the homemade firearms are required to be stamped with a serial

¹ Everytown for Gun Safety has nearly six million supporters and more than 350,000 donors including moms, mayors, survivors and everyday Americans who are fighting for public safety measures that can help save lives. At the core of Everytown are Mayors Against Illegal Guns, Moms Demand Action for Gun Sense in America, Students Demand Action and the Everytown Survivor Network. Everytown Law is the litigation arm of Everytown for Gun Safety Support Fund, and fights for the right of every American to be free from gun violence.

number. As a result, when these homemade firearms show up at a crime scene, law enforcement cannot determine where the firearm came from, hence the term “ghost guns.” Now these “ghost guns” are increasingly being used in connection with criminal activity. In a shocking example just last month, a sixteen-year-old used a ghost gun to commit a mass shooting at Saugus High School in Santa Clarita, California, resulting in the tragic murder of two students, the injuring of three others, and the shooter’s suicide.

By this petition, Everytown urgently calls on the ATF to remedy this regulatory failure by issuing a revised regulation to clarify that sellers and purchasers of the core building blocks of firearms—frames and receivers and build-your-own kits that include those core building blocks—are subject to the requirements of federal law whenever those frames or receivers (1) are designed, intended, or marketed to be used in assembled, operable firearms, or (2) can be converted for use in an assembled, operable firearm without the expenditure of substantial time and effort. The existing regulation that describes frames and receivers is vague and out-of-date. Issuing an amended regulation would ensure that transactions involving such firearm building blocks and kits are subject to the requirements of the federal firearms laws—including that sellers perform a background check on buyers and that every such frame or receiver be stamped with a serial number, allowing it to be traced in the event that it is later used in a crime.

No Congressional action or new legislation is required to regulate unfinished frames and receivers. The ATF can fix this dangerous ghost gun regulatory failure on its own, and it is well within the agency’s statutory authority to do so through its rulemaking process. Everytown urges the ATF to begin that process immediately in order to protect the public from the emerging threat posed by the unchecked proliferation of unserialized, untraceable ghost guns.

Background and Summary

In 1968, amid rising rates of violent crime and following several high-profile assassinations—including the killing of President Kennedy with a rifle ordered through the mail—Congress passed landmark legislation to assert federal control over the manufacturing, distribution, purchase, and sale of firearms. One of the principle aims of the Gun Control Act of 1968 was to shut down the ability of criminals, minors, and persons with dangerous histories to obtain mail-order firearms without any federal oversight or regulation. To achieve this aim, the Act mandated, among other things, that firearms dealers be federally licensed and that every firearm be stamped with a serial number so that law enforcement could trace the origin of the firearm if it ended up being used in a crime. The Act also defined the term “firearm” broadly to include not only complete, fully functional weapons, but also the weapon’s core building block—the frame of a handgun, or the receiver

of a long gun—so long as that building block was designed to or could “readily be converted” into a functional weapon.

Over 50 years later, gun traffickers, criminals, domestic abusers and minors are increasingly seizing on a new and easy way to circumvent this law and obtain deadly and untraceable firearms without going through a licensed dealer and without undergoing a background check (as later mandated by the Brady Act of 1993). These prohibited persons are doing so by purchasing unfinished frames or receivers, either separately or as part of ghost gun kits ordered over the internet or bought at gun shows or gun stores. These kits typically contain all of the parts needed to assemble a fully functional firearm, including a frame or receiver, as well as instructions that allow anyone with the right tools to make their own fully operational and untraceable guns in a short time.

Through a series of flawed determination letters that misapply the text and ignore the legislative intent behind the Gun Control Act, the ATF has allowed a dangerous market in ghost guns to take hold and expand—giving a green light to the unregulated sale of such unfinished frames and receivers and kits over the internet and at gun shows and gun stores. As a result, law enforcement agencies are recovering ghost guns at increasing rates. According to one recent report, as many as 30 percent of guns recovered by law enforcement in California have no serial number and are untraceable.² In one large city—San Jose—the recent increase in police recoveries of ghost guns has been an astronomical 940 percent—“with 52 guns recovered in 2018 versus just 5 in 2017.”³ Ghost guns have been used to commit mass shootings, are trafficked by criminal gangs and narcotics traffickers, and have even been recovered in connection with terroristic activities. Not surprisingly, law enforcement officers around the country have been speaking out about this rising danger, with one retired police chief explaining that “[p]eople want these guns because they want to be invisible to government and to law enforcement.”⁴ The ATF acknowledges on its website that the availability of unserialized firearms “hinders crime gun investigations [and] jeopardiz[es] public safety.”⁵

This situation was avoidable because the ATF could and should have acted to regulate unfinished frames and receivers using its existing authority. Federal law makes clear that firearm frames and receivers that are designed to be or that can “readily be converted” into operable weapons—including ghost gun kits available online—fall within the current and longstanding statutory definition of “firearm.”

² Alain Stephens, *Ghost Guns Are Everywhere in California*, The Trace (May 17, 2019), <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

³ Josiah Bates, *Authorities Flagging Rise of Ghost Guns*, Time (November 23, 2019).

⁴ ‘Ghost Guns are Untraceable, Easy to Make, More Prevalent’, The New York Times (Nov. 22, 2019).

⁵ ATF, *Can functioning firearms made from receiver blanks be traced?*, <https://www.atf.gov/firearms/qa/can-functioning-firearms-made-receiver-blanks-be-traced>.

As one federal judge explained, “a plain reading of [the federal definition of ‘firearm’] indicates that if the receiver of a weapon can be readily converted to expel a projectile, then that receiver can be considered a ‘firearm’ under the statute.”⁶

The essential flaw in the ATF’s determination letters finding that certain frames and receivers are not firearms, as discussed in detail below, is that the items under review are, in fact, frames and receivers covered by the Gun Control Act. Federal law is clear—as Congress understood—that a nearly finished receiver is a receiver, and an almost complete frame is a frame. There is no purpose to these objects other than for use as the essential component in assembled, operable firearms. Their capacity to be made into firearms is how they are marketed and sold and is the source of their appeal to purchasers. This unavoidable fact should be the end of the analysis. Instead, the ATF has engaged in a misguided exercise of telling sellers that it will regulate frames and receivers only if certain holes or cavities are present – even though the object at issue is self-evidently a frame or receiver that exists for the sole purpose of use in a firearm. Because unfinished frames and receivers are designed for this use, and because they can readily be converted for this use, unfinished frames and receivers are and should be covered as “firearms” under the Gun Control Act, regardless of whether specified areas have already been drilled out by the manufacturer or instead are sold to be quickly and easily drilled out by the purchaser.

With this petition for rulemaking, Everytown urges the ATF to immediately reconsider its current position and amend its regulations. While a small number of states have already acted to address this growing ghost gun danger⁷—and states and cities would be well-advised to take their own legal actions against this public nuisance that is fueling crime across the country—the ease with which firearms are trafficked across state lines demands a federal response that will be uniformly applicable in all 50 states.

⁶ *United States v. Wick*, No. CR 15-30-M-DLC, 2016 WL 10637098, at *1 (D. Mont. July 1, 2016), *aff’d*, 697 F. App’x 507 (9th Cir. 2017).

⁷ Cal. Penal Code § 29180 (requiring a person who assembles a firearm to obtain a serial number from the California Department of Justice); Cal. Penal Code § 30400, et seq. (requiring that sales of firearm “precursor parts”, i.e., frames and receivers, be done only by licensed vendors starting July 1, 2024, and requiring background checks on purchasers starting July 1, 2025); Conn. Pub. A. 19-6 (requiring, starting October 1, 2019 a person to obtain a serial number within 30 days of completing the manufacture of a firearm and prohibiting the sale of an unserialized frame or receiver); N.J. Stat. §§ 2C-39-3(n), 2C:39-9(d), (k), (n) (prohibiting unlicensed persons from manufacturing their own firearms starting November 8, 2018; prohibits possession of an unserialized firearm starting July 16, 2019); Wash. Rev. Code §§ 9.41.010, 9.41.190, 9.41.325 (starting July 1, 2019, prohibiting the manufacture of an untraceable firearm with the intent to sell it; prohibiting a person from knowingly or recklessly allowing, facilitating, aiding, or abetting the manufacture or assembly of an untraceable firearm by a prohibited possessor, including by completing a sale without a background check).

Issuing a revised regulation would prevent future gun violence and promote public safety by shutting down a burgeoning black market supplying deadly and untraceable firearms to criminals and other persons prohibited from having guns. Failing to take this step, however, will allow the continued circumvention of our country's foundational gun laws, leading to more guns in the hands of—and more gun violence perpetrated by—gun traffickers, domestic abusers, and other criminals.

Discussion

This petition for rulemaking describes the scope of the ghost gun problem, and offers a solution to the regulatory failure, in nine parts:

Part 1 outlines the ATF's position that unfinished frames and receivers are not subject to federal regulation.

Part 2 connects that regulatory failure to the growth of the market in unfinished frames and receivers and complete ghost gun kits.

Part 3 highlights cases of ghost gun trafficking, instances where prohibited persons acquired ghost guns, and gun violence incidents perpetrated with ghost guns.

Part 4 analyzes the statutory definition of "firearm" and explains how frames and receivers are covered by the definition.

Part 5 dives deeper into this analysis, showing that an unfinished frame or receiver should be regulated if it is designed for use in an assembled, operable firearm, or can readily be converted into an assembled, operable firearm.

Part 6 explains why the current regulatory definition of "frame and receiver" is deeply flawed and requires amending.

Part 7 examines the ATF's decision-making with regard to the classification of frames and receivers as firearms, showing how the ATF's determination letters have been poorly reasoned and inconsistent, including how, in recent years, the ATF has completely disregarded the guidance that the statutory text provides.

Part 8 shows that the ATF can and should revise its current approach to frames and receivers by following the recent example of its bump stock regulation, an instance where the ATF corrected its prior flawed stance in determination letters precisely because those rulings were not grounded in the statutory text.

Part 9 proposes rulemaking that would amend the regulatory definition of "firearm frame or receiver" to align that definition with the text and purposes of federal firearms laws and to directly address the ghost gun problem. The proposed definition would regulate as a firearm any frame or receiver (1) that is designed, intended, or marketed to be used in an assembled, firearm, or (2) that, without the expenditure of substantial time and effort, can be converted for use in an assembled, operable firearm.

1. The ATF's refusal to regulate frames and receivers as firearms has led to a flourishing market that funnels untraceable firearms to traffickers and prohibited persons.

On its face, federal law provides for significant regulation of frames and receivers. Federal law defines “firearm” to include frames and receivers as the functional building block of a firearm.⁸ Felons, fugitives, and domestic violence offenders are prohibited from buying and possessing frames and receivers just as they are prohibited from buying and possessing fully built firearms.⁹ Anyone who manufactures or deals in frames or receivers must be licensed by the ATF.¹⁰ A purchaser of a frame or receiver sold by a licensed dealer must undergo a background check.¹¹ A frame or receiver that is not assembled into a functioning weapon when it is sold or shipped must, just like a completed firearm, be marked with identifying information, including a serial number.¹²

However, despite the codified definition of firearm, beginning a little over a decade ago, the ATF took the position that many frames and receivers are not “frames or receivers” regulated by federal law. In the ATF's view, a frame or receiver is *not* legally considered a firearm if it has not yet undergone certain specified machining operations—namely the drilling of the trigger cavity.¹³ Distributors market these not-quite-ready-for-use frames as “80%” complete, with the remaining 20% of machining work to be done by the purchaser. In the ATF's view, an “80%” or “unfinished” receiver is characterized by having “not yet reached a stage of manufacture that meets the definition of firearm frame or receiver found in the Gun Control Act of 1968.”¹⁴ Therefore, although a nearly ready-to-use frame or receiver can be made into a functioning semi-automatic firearm in under an hour by any layperson with the right tools and instructions, the ATF has determined that those frames and receivers are outside the reach of federal law.

An unfinished frame or receiver exempt from federal regulation looks substantially the same as a completed frame or receiver that is treated as a firearm. For example, the ATF's website includes the below graphic¹⁵ to illustrate the

⁸ 18 U.S.C. § 921(a)(3).

⁹ 18 U.S.C. § 922(d), (g).

¹⁰ 18 U.S.C. § 923(a).

¹¹ 18 U.S.C. § 922(t)(1).

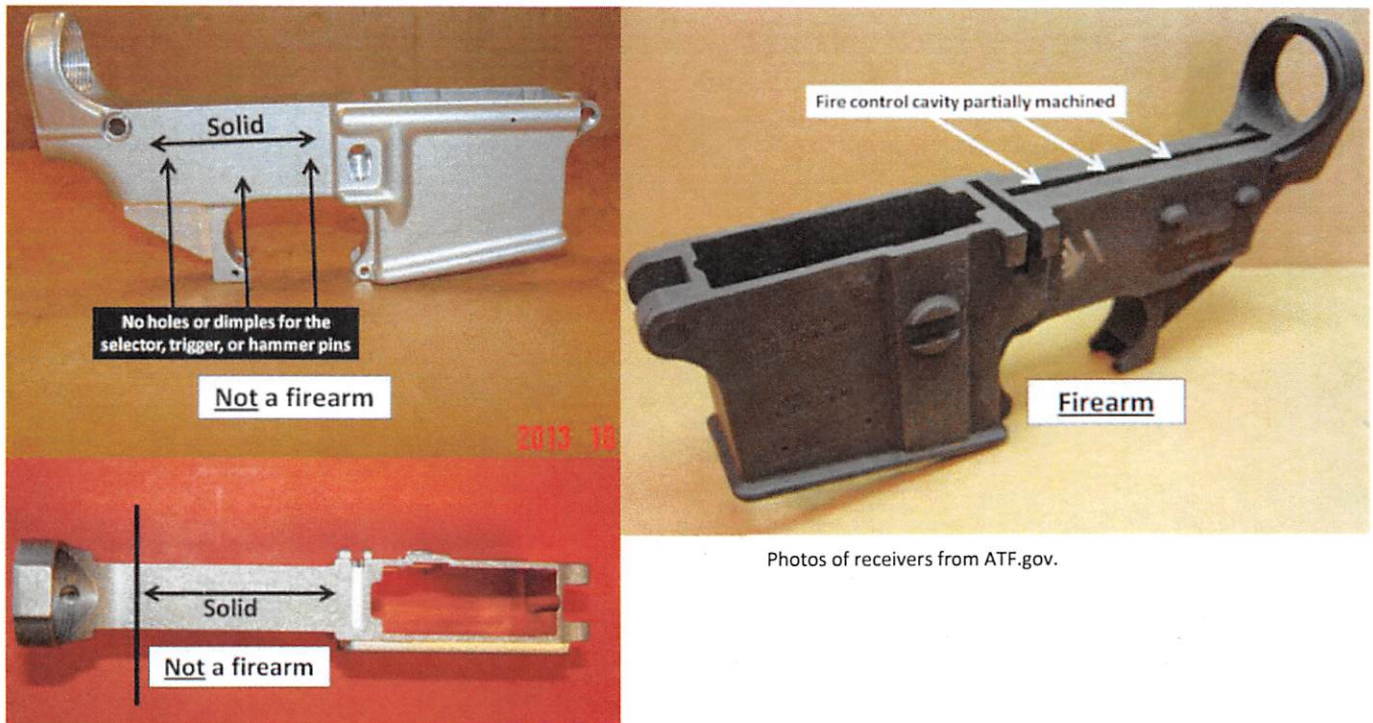
¹² 18 U.S.C. § 923(i); 27 C.F.R. § 478.92(a)(2).

¹³ ATF, Are “80%” or “unfinished” receivers illegal?, <https://www.atf.gov/firearms/qa/are-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished%E2%80%9D-receivers-illegal>.

¹⁴ ATF, What is an “80%” or “unfinished” receiver?, <https://www.atf.gov/firearms/qa/what-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished-receiver>.

¹⁵ ATF, Are “80%” or “unfinished” receivers illegal?, <https://www.atf.gov/firearms/qa/are-%E2%80%9C80%E2%80%9D-or-%E2%80%9Cunfinished%E2%80%9D-receivers-illegal>.

difference between an unfinished, unregulated AR-15 lower receiver¹⁶ and a complete, regulated lower AR-15 receiver:



The ATF has determined that the unfinished lower receiver on the left is not a firearm and therefore not subject to regulation under federal law. Even though the receiver shown in those photos on the left has no purpose other than to be part of a an operable firearm, and could, with a little work, be turned into the major component of a firearm, the ATF website dryly states that the receiver is not a firearm because “the fire-control cavity area is completely solid and un-machined and [therefore] ha[s] not reached the ‘stage of manufacture’ which would result in the classification of a firearm per the [Gun Control Act].”¹⁷ The natural result of ATF’s determinations has been a profound expansion of the availability of unfinished frames and receivers, providing an easy means to circumvent federal and state gun laws, and attracting prohibited persons and the gun traffickers who cater to them.

¹⁶ The AR-15 lower receiver houses the parts needed to fire, including the trigger cavity and magazine well, while the upper receiver attaches to the barrel. The upper receiver is not considered a firearm.

¹⁷ *Id.*

2. The failure to regulate frames and receivers has led to the growth of a market in nearly-complete frames and receivers that are easily finished and assembled into ghost guns.

The current lack of regulation and enforcement has led to the proliferation on the internet of so-called “80%” frames and receivers machined just far enough short of completion to avoid regulation. These unfinished frames and receivers are marketed as having one purpose—to become part of a finished firearm—and many websites include instructional videos on how to complete the manufacturing.

A flourishing and unregulated online market in frames and receivers provides ready access to firearms to anyone who acquires a few basic tools and can follow simple instructions. Over the last decade, a swarm of websites have emerged selling all the parts needed to build a firearm to anyone, anywhere, without any background check or verification of identity. Through a single website, a person can purchase anything from an AR-15 lower receiver, which, with minimal effort, can be finished into a lethal assault weapon, to a pistol frame that can quickly be turned into a ready-to-use handgun, to complete “kits” that include every part needed to make a functioning firearm.

In fact, the kits are often marketed to emphasize how quickly and easily they can be turned into functioning firearms. One website offers a patented jig—a device to hold a frame and receiver and guide the drilling process—and declares that it is “ridiculously easy for a non-machinist to finish their 80% lower in under 1 hour with no drill press required.”¹⁸ Another seller boasts that with their AR-15 kit, “[b]uilding time doesn’t take too long. Within an hour or two, you should be breaking it in at the range.”¹⁹ Accompanying a depiction of all the parts included in the build kit, one seller explains that the build kit, together with a jig, a magazine, and ammunition, will allow the buyer to make a functional pistol: to assemble the pistol, the buyer needs to “simply finish the cutting on your frame, and build away.”²⁰

¹⁸ 80% Arms, Homepage, <http://80percentarms.com> (last visited Dec. 2, 2019 at 2:09 p.m.).

¹⁹ Thunder Tactical, Why is purchasing an AR-15 kit is [sic] great for beginners?, <https://thundertactical.com/ar-15-kits-great-for-beginners/> (last visited Dec. 2, 2019 at 2:34 p.m.).

²⁰ 80% Lowers, 9mm 1911 Pistol Build Kit, <https://www.80-lower.com/products/9mm-1911-pistol-build-kit-5-barrel-government-length-with-80-picatinny-railed-black-frame-w-free-portable-handgun-lock-box/> (last visited Dec. 2, 2019 at 2:35 p.m.).



9mm 1911 Pistol Build Kit (5" Barrel, Government Length) with 80% Picatinny Railed Black Frame w/ Free Portable Handgun Lock Box

~~\$949.99~~ **\$629.99**

★★★★★

SKU: 1911-GMDTAB_5TH-BA-TACBK-D

Quantity:

▼ 1 ▲

ADD TO CART

[ADD TO WISH LIST](#)

Screen capture from 80-lower.com.

The same seller offers a similarly complete kit to build an AR-15:



AR-15 Build Kit - 5.56mm NATO (16" Melonite Barrel & Classic A2 Handguard) w/ 80% Lower (1:7 Twist)

~~\$639.99~~ **\$410.00**

★★★★★

2 reviews

SKU: 556-16-CLASSIC-A2-RETL

80% Lower Receiver:

Forged Black Fro/5ate Lower

Quantity:

▼ 1 ▲

ADD TO CART

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Screen capture from 80-lower.com.

The seller mentions that the kit “requires that the builder complete the optional 80% lower receiver” but encourages shoppers to undertake finishing the lower receiver by suggesting that this “is the rewarding part of the experience (and the only way to build your own AR-15 without the need of an FFL [licensed firearms dealer] transfer or serialization)!”²¹ Many sellers urge shoppers to purchase a special jig along with the kit to simplify the machining process:²²

²¹ 80% Lowers, AR-15 Build Kit – 5.56 mm NATO, <https://www.80-lower.com/products/ar-15-build-kit-5-56mm-nato-16-melonite-barrel-classic-a2-handguard-w-80-lower-1-7-twist/> (last visited Dec. 2, 2019 at 2:36 p.m.).

²² 5D Tactical, Complete 16” 7.62X39 AR-15 80% Build Kit, <https://www.5dtactical.com/762x39-build-kit-p/5d-76239cbk.htm>

COMPLETE 16" 7.62X39 AR-15 80% BUILD KIT



This 7.62 x 39 AR Build Kit Contains:

- 16" AR-15 Upper Receiver - Select Handguard and Muzzle Device Options Below!
- Black Nitride 7.62x39 Bolt Carrier Group
- Standard AR-15 Charging Handle
- Mil-Spec Stock
- 6-Position Carbine Buffer Tube Kit
- Forged 7075-T6 AR-15 80% Lower Receiver
- Mil-Spec AR-15 Lower Parts Kit

Don't forget to add one of our [80% Lower Jigs](#), the fastest and easiest way to finish your 80% Lower at home!

Price: \$559.93

Sale Price: \$479.99

You Save: \$79.94

Free Shipping On Orders Over \$300!

Screen capture from 5dtactical.com

Some sellers even provide video instructions on completing the unfinished frame or receiver:

Home | Polymer80 | Polymer 80 Glock 19 PF940C 80% Compact Pistol Frame Kit



Polymer 80 Glock 19 PF940C 80% Compact Pistol Frame Kit

★★★★★ 107 Review(s) [Write a Review](#)

Your Price: \$79.99

Retail Price: \$149.99

You Save: \$44.00 (29%)

[Questions about this item? Ask here.](#)

Part Number: PF940C-COYBRNLS

Availability: In Stock. [Free Shipping.](#)

CHOOSE OPTIONS

Color*

Coyote - Brownells Aggressive Texture CLOSEOUT :

Add Frame Parts Kit

☐ **Glock OEM 9mm Frame Parts Kit (+\$49.99)**

Screen capture from rockybrass.com.

This seller assures shoppers that the “kit is easy to complete with the jig and bits included.”²³

²³ Rocky Brass, Polymer 80 Glock 17 PF940V2 80% Standard Pistol Frame Kit, https://www.rockybrass.com/Polymer-80-Glock-17-PF940V2-80-Standard-Pistol-Frame-Kit_p_19.html (last visited Dec. 2, 2019 at 2:37 p.m.).

These websites—as well as gun show sellers and retailers—provide everything needed to make a firearm, while promoting their products to any novice gun-maker without a background check. As the next sections details, this unregulated market puts public safety at risk.

3. Gun traffickers and criminals exploit the unregulated market in unfinished frames and receivers.

The ATF's failure to regulate unfinished frames and receivers has endangered public safety. Over the last several years, law enforcement agencies have recovered ghost guns at an increasing rate.²⁴ As noted in the Background and Summary, according to a recent report, the ATF estimates that 30 percent of guns recovered in California have no serial number and are therefore untraceable.²⁵ State and local law enforcement have reported recovering ghost guns from felons,²⁶ criminal gangs,²⁷ drug dealers,²⁸ and minors.²⁹ Ghost guns have also been used in high profile crimes, including: as already referenced, the recent mass shooting by a 16-year-old student at Saugus High School in Santa Clarita, California;³⁰ the

²⁴ Alain Stephens, *Officials Confirm Santa Clarita Shooter Used a Ghost Gun*, The Trace (Nov. 21, 2019), <https://www.thetrace.org/2019/11/santa-clarita-school-shooting-ghost-gun/> (the San Diego Police Department recovered 5 ghost guns in 2017 and 52 in 2018; the San Francisco Police Department recovered 15 ghost guns in 2017 and 44 in 2018); Declaration of Blake Graham, Special Agent Supervisor for the California Department of Justice, Bureau of Firearms, *Washington v. U.S. Dep't of State*, 18-CV-01115, 14-15 (W.D. Wash. Aug. 9, 2018) (review of California's Automated Firearms System showed 169 ghost guns recovered by local law enforcement agencies in 2016, 344 in 2017, 391 through August 1, 2018, with 670 ghost guns expected to be recovered in 2018)

²⁵ Alain Stephens, *Ghost Guns Are Everywhere in California*, The Trace (May 17, 2019), <https://www.thetrace.org/2019/05/ghost-gun-california-crime/>.

²⁶ Melissa Pamer, *Father-Daughter Pair Charged After Assault Rifles, 66,000 Rounds of Ammunition Found in Temple City Gun Cache*, KTLA5 (Feb. 21, 2018), <https://ktla.com/2018/02/21/father-daughter-pair-charged-after-assault-rifles-66000-rounds-of-ammunition-found-in-temple-city-gun-cache/>; Bob Bennett, *Police: Convicted felon revealed gun during argument*, Press-Republican (Apr. 16, 2018), https://www.pressrepublican.com/news/local_news/police-convicted-felon-revealed-gun-during-argument/article_690748e1-3549-5324-acef-42eb7cc2f82e.html.

²⁷ Kelsey Hammon, *More arrested Monday in alleged connection with drug-trafficking operation* (July 10, 2019), <https://www.timescall.com/2019/07/10/more-arrested-monday-in-alleged-connection-with-drug-trafficking-operation/>; Sontaya Rose, *Fresno Police gang crackdown busts prostitution ring, dozens arrested* (Sept. 8, 2017), <https://abc30.com/society/fresno-police-gang-crackdown-busts-prostitution-ring-dozens-arrested-2393264/>.

²⁸ Erin Vogt, *'Armed & Dangerous' Duo Found with Coke, Meth and Kids – Cops*, New Jersey 101.5 (Aug. 6, 2019), <https://nj1015.com/armed-dangerous-duo-found-with-coke-meth-and-kids-cops/>; *Suspected Cocaine Dealer Arrested with a 'Ghost Gun'*, Santa Barbara Independent (May 17, 2019), <https://www.independent.com/2019/05/17/suspected-cocaine-dealer-arrested-with-a-ghost-gun/>.

²⁹ Philip Jones, *Indiana teen built 'ghost gun' from online parts*, Columbia Daily Tribune (May 25, 2019), <https://www.columbiatribune.com/news/20190525/indiana-teen-built-ghost-gun-from-online-parts>.

³⁰ Alain Stephens, *Officials Confirm Santa Clarita Shooter Used a Ghost Gun*, The Trace (Nov. 21, 2019), <https://www.thetrace.org/2019/11/santa-clarita-school-shooting-ghost-gun/>.

August mass shooting in Midland and Odessa, Texas;³¹ a mass shooting with an AR-15 ghost gun that left five dead on a college campus;³² the shooting of four coworkers with a pistol made from parts purchased online by a person prohibited from purchasing a firearm;³³ and a bank robbery and shootout with police involving assault rifle ghost guns.³⁴

A white supremacist group that bombed an Islamic center in Minnesota and attempted to bomb a women's health clinic in Illinois also made their own AR-15s, including three that were fully automatic.³⁵ A man subject to a domestic violence restraining order, who planned to bomb a police station or a mosque, bought AR-15 parts online and was building a rifle in his basement.³⁶ Two brothers who aspired to assist ISIS activities in the Middle East set up a gun manufacturing business, making fully automatic AR-15s to send to Mexico.³⁷ A domestic violence offender who was making ghost guns declared that if the government ever came to question him, "it's going to be answered in lead . . . I'm going to take as many of them as I can."³⁸ A man who sold prescription drugs and methamphetamine on the dark web to buyers around the world was found in possession of 13 unserialized firearms, apparently constructed from parts purchased online.³⁹

A review of federal prosecutions over the last several years similarly reveals a thriving market in the trafficking of ghost guns. ATF agents' accounts in those cases run the gamut from first-time traffickers to extensive criminal businesses. Traffickers are sending scores of firearms across the border and abroad.⁴⁰ In

³¹ Dan Frosch, et al., *Authorities Suspect Man of Making and Selling Gun Used in Texas Shooting*, Wall Street Journal (Sept. 4, 2019), <https://www.wsj.com/articles/authorities-suspect-man-of-making-and-selling-gun-used-in-texas-shooting-11567639127>.

³² Michael Martinez, *Santa Monica gunman left farewell note apologizing for killing father, brother*, CNN.com (June 16, 2013), <https://www.cnn.com/2013/06/14/us/california-santa-monica-gunman/index.html>.

³³ Chris Aadland, *WTS Paradigm gunman exploited loopholes to buy parts for gun used in shooting, DA says*, Wis. State Journal (Jan. 8, 2019), https://madison.com/wsj/news/local/crime/wts-paradigm-gunman-exploited-loopholes-to-buy-parts-for-gun/article_ea9f3024-c08c-5458-b50f-21807d03d67f.html.

³⁴ Joe Goldeen, *Another arrest, reward in Bank of the West heist*, Recordnet.com (Sept. 16, 2014), <https://www.recordnet.com/article/20140916/NEWS/140919728>; Richard Winton & Mark Puente, *Rifle used in deadly Riverside shooting was untraceable 'ghost gun,' sources say*, L.A. Times (Aug. 14, 2019), <https://www.latimes.com/california/story/2019-08-14/rifle-used-in-deadly-riverside-shooting-was-untraceable-ghost-gun-sources-say>.

³⁵ Complaint, *U.S. v. Hari, et al.*, 18-CR-20014, at 9, 12-13 (C.D. Ill. Mar. 13, 2018); Superseding Indictment, *U.S. v. Hari, et al.*, 18-CR-20014, at 5-6 (C.D. Ill. May 2, 2018).

³⁶ Complaint, *U.S. v. Garguilo*, 17-CR-10186, at 3-5 (D. Mass. Aug. 26, 2016).

³⁷ Complaint, *U.S. v. Dannon*, 19-CR-00229, at 34-42 (S.D. Ind. May 15, 2019).

³⁸ Complaint, *U.S. v. Parker*, 15-CR-04060, at 13 (W.D. Mo. Oct. 28, 2015).

³⁹ Government's Sentencing Position; Exhibit A, *U.S. v. Reeves*, 19-CR-00028, at 4 (C.D. Cal. May 21, 2019).

⁴⁰ Complaint, *U.S. v. Rodriguez, et al.*, 18-CR-00322, at 2 (S.D. Tex. Apr. 11, 2018) (man bragged that he manufactured firearms on a weekly basis and had sold over 150 firearms to buyers in

California, a man with a prior felony weapons conviction headed up an organization that manufactured and sold ghost guns in addition to selling methamphetamine and other drugs.⁴¹ In addition to making AR-15 ghost guns, the man said he could make 1911-type handguns and “any caliber Glock.”⁴² A man who finished 80% lower receivers with a drill press negotiated the sale of finished AR-15 ghost guns on the dark web and bragged he had “built so very many of both” polymer and aluminum-based AR-15s.⁴³

This illicit market has a low barrier to entry and the potential for bringing in substantial sums of money. One California man learned how to manufacture firearms on the internet and decided to make guns to earn money while unemployed, eventually selling AR-type ghost guns and a short-barreled rifle.⁴⁴ Another man quit his job because manufacturing firearms with a drill press in his home had become so lucrative.⁴⁵ After being arrested, a Rhode Island man who made a fully automatic AR-15 ghost gun for an undercover agent said that he sold homemade guns because he needed money.⁴⁶ A man prohibited from possessing firearms due to a domestic violence offense explained to agents who came to investigate him that milling out lower receivers is “not hard to do.”⁴⁷ An ATF confidential source captured the moment that a Massachusetts man, a felon convicted of child rape, manufactured his first firearm from parts he ordered online using a drill press in his basement.⁴⁸ The man successfully fired the ghost gun and sold it for a profit, and he planned on manufacturing four more ghost guns to sell, and one to keep for himself.⁴⁹ More experienced ghost gun traffickers have become scarily efficient: a Massachusetts gang member bragged about his gun-building proficiency and was recorded making a ghost gun pistol in about 30 minutes with a Dremel tool, drill, pliers, and other tools.⁵⁰

Mexico); Complaint, *U.S. v. Soto, et al.*, 18-MJ-01487 (S.D. Tex. Dec. 7, 2018) (supplier built 50 AR style rifles from lower receivers, including 15 fully automatic weapons, for a Mexican cartel); Complaint, *U.S. v. Peterson, et al.*, 19-MJ-03034, (S.D. Fla. June 26, 2019) (Florida couple shipped lower receivers and other parts, sufficient to complete at least 52 fully functioning assault rifles, to Argentina); *U.S. v. Parada*, 18-CR-00123, Plea Agreement (M.D. Fla. May 8, 2019) (man shipping firearms to Bolivia hidden in car frames was found with 50 unserialized AR-style lower receivers in addition to 43 other firearms).

⁴¹ Criminal Complaint, *U.S. v. Galvez*, 17-CR-00714, at 9 (C.D. Cal. Oct. 20, 2017).

⁴² *Id.* at 11.

⁴³ Complaint, *U.S. v. Smith*, 18-CR-00043, at 3, 10 (E.D. Cal. Feb. 16, 2018).

⁴⁴ Government’s Sentencing Position for Defendant Steven Carrillo, *U.S. v. Manzo*, 16-CR-00749, at 4-8 (C.D. Cal. May 26, 2017).

⁴⁵ Complaint, *U.S. v. Smith*, 18-CR-00043, at 14, 17-18 (E.D. Cal. Feb. 16, 2018),

⁴⁶ Criminal Complaint, *U.S. v. Ladwig*, No. 18-MJ-00448, at 6 (D.R.I. Dec. 12, 2018).

⁴⁷ Complaint, *U.S. v. Parker*, 15-CR-04060, at 15 (W.D. Mo. Oct. 28, 2015).

⁴⁸ Complaint, *U.S. v. Blackmer*, 16-CR-00009, at 6-7 (D.N.H. Nov. 9, 2015).

⁴⁹ *Id.* at 7.

⁵⁰ Complaint, *U.S. v. Echeverria, et al.*, 19-MJ-06527, 12, 16 (D. Mass. Oct. 28, 2019).

4. Federal law defines “firearm” broadly to cover currently inoperable firearms and frames and receivers that are “designed” to fire or that can “readily be converted” to fire.

Federal firearms law requires treating a frame or receiver as a regulated “firearm” if that frame or receiver can be part of a weapon that: (1) “will” fire; (2) “is designed to” fire; or (3) “may readily be converted to” fire. Federal law therefore covers unfinished frames and receivers.

The federal definition of “firearm” dates back over 50 years to the Gun Control Act of 1968.⁵¹ It provides:

The term “firearm” means (A) any weapon (including a starter gun) which will or is designed to or may readily be converted to expel a projectile by the action of an explosive; (B) the frame or receiver of any such weapon; (C) any firearm muffler or firearm silencer; or (D) any destructive device. Such term does not include an antique firearm.

18 U.S.C. § 921(a)(3). The statutory definition of firearm therefore describes four categories of items, each of which constitutes a “firearm” for purposes of federal law. Subparagraph (A) provides three independent criteria for an item to qualify as a firearm, i.e., as a thing that can “expel a projectile by the action of an explosive.” It describes (1) “any weapon . . . which will . . . expel a projectile by the action of an explosive”—defining an operable weapon—(2) “any weapon . . . which . . . is designed to . . . expel a projectile by the action of an explosive”—covering items intended to fire projectiles, but which may not function in their present condition—and (3) “any weapon . . . which . . . may readily be converted to expel a projectile by the action of an explosive”—clarifying that items that do not presently fire but can “readily be converted” to function are also covered firearms. As a federal appeals court has explained, “Congress did not consider operability as an essential statutory element” of the definition of “firearm.”⁵²

Subparagraph (B) extends the definition of “firearm” to cover the frame or receiver “of any such weapon.” “[T]he term ‘firearm’ includes mere parts of a gun that alone are incapable of firing, such as the frame”⁵³ Subparagraph (B) refers back to the tripartite definition in subparagraph (A): that is to say, a “frame or receiver” is a “firearm” if it is a component of a “weapon” that “[1] *will* or [2] *is designed to* or [3] *may readily be converted* to expel a projectile by the action of an explosive.”

⁵¹ See Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197 (1968), codified at 18 U.S.C. § 921(3); Gun Control Act of 1968, Pub. L. 90-618, 82 Stat. 1213 (1968), codified at 18 U.S.C. § 921(a)(3).

⁵² *United States v. Hunter*, 101 F.3d 82, 85 (9th Cir. 1996).

⁵³ *U.S. v. Brown*, 117 F.3d 353, 356 (7th Cir. 1997).

By placing “such” in front of a term that is used earlier in a statute’s text—here, “weapon”—the term’s meaning from the first instances is carried forward to the latter usage in subparagraph (B).⁵⁴ Thus, all three portions of subparagraph (A)’s disjunctive are carried forward to subparagraph (B); “weapon” has the exact same meaning in subparagraphs (A) and (B). Indeed, the Department of Justice recently took this position in litigation.⁵⁵ A federal judge agreed, holding that “a plain reading of § 921(a)(3) indicates that if the receiver of a weapon can be readily converted to expel a projectile, then that receiver can be considered a ‘firearm’ under the statute.”⁵⁶

In sum, “Congress meant the term ‘firearm’ to include the *entire subset* of weapons that can fire, *or be made to fire*, a projectile out of a barrel with the aid of a propellant”⁵⁷ The definition of “firearm” requires treating a frame or receiver as a regulated firearm if that frame or receiver has the capacity to be part of any weapon that: (1) “will” fire; (2) “is designed to” fire; or (3) “may readily be converted to” fire. There is simply no statutory basis to “read in” a requirement that receivers or frames be “complete” in order to be a frame or receiver. The current failure to regulate frames or receivers “designed to” fire or those that may “readily be converted” to fire impermissibly restricts the statutory language and intent.

5. An unfinished frame or receiver falls within the statutory definition of “firearm” because it is “designed” to operate in a weapon or can “readily be converted” to operate as a weapon.

The first reason an unfinished frame or receiver qualifies as a “firearm” under federal law is that it is clearly “designed” to be part of a functional weapon. The dictionary definition of “design” includes “to plan or have in mind as a purpose;” “to devise or propose for a specific function,” or “to create, plan, or calculate for

⁵⁴ See *United States v. Krstic*, 558 F.3d 1010, 1013 (9th Cir. 2009) (“‘Such’ can refer exclusively to preceding nouns and adjectives. It can also refer to surrounding verbs, adverbial phrases, or other clauses. Context is typically determinative.”); *International Brotherhood of Electrical Workers v. Illinois Bell Tel. Co.*, 496 F.2d 1, 3 (7th Cir. 1974) (concluding that statute’s prohibition on an employer’s financing “any such action” in a proviso referred back to language in a preceding clause stating the right of a union member “to institute an action in any court”).

⁵⁵ Brief of the United States, *U.S. v. Wick*, 2017 WL 774210 at 29 (9th Cir. Feb. 22, 2017) (“Further, nothing in § 921(a)(3)(B) limits receivers to only whole receivers as Wick suggests. The only limitation on the form of the receivers in subsection B is that they come from “any such weapon” that is either designed to shoot or can readily be converted to do so. That is, a receiver, even one in two or three pieces, that can readily be converted into a functioning gun with the addition of some other parts and weld or two is a firearm.”).

⁵⁶ *United States v. Wick*, No. CR 15-30-M-DLC, 2016 WL 10637098, at *1 (D. Mont. July 1, 2016), *aff’d*, 697 F. App’x 507 (9th Cir. 2017).

⁵⁷ *United States v. Caron*, 941 F. Supp. 238, 247 (D. Mass. 1996) (emphasis added).

serving a predetermined end.”⁵⁸ By regulating a weapon that is “designed to” fire, federal law reaches beyond a weapon that will fire in its current state, including to inoperable firearms.⁵⁹ Federal courts agree unanimously on this point.⁶⁰ Though it cannot fire in its current state, an inoperable firearm “continues to be ‘designed’ to fire a projectile.”⁶¹ An inoperable firearm is a firearm “even though it is in bad condition and can be restored to working condition only by a gunsmith.”⁶² Even if it would take a gun repair expert an hour or two to restore a firearm to firing condition, or if a novice would be incapable of doing so, the firearm’s design affirms its status as a legal firearm.⁶³

Similarly, it follows that unfinished frames and receivers are “firearms” within the federal definition because they are unquestionably designed to be part of a functional firearm—indeed, it is how these products are marketed and used and a firearm cannot function without one. The companies selling so-called “80%” frames or receivers clearly and unambiguously state these products are intended and designed to be used to build firearms. Accordingly, these frames and receivers must be considered to be firearms because they have no purpose other than to serve as the building blocks for functional firearms.

The second reason an unfinished frame or receiver is also a firearm within the statutory definition is because it “may readily be converted” to fire: specifically, a non-professional can, with widely available tools and a few hours or less of time, turn that frame or receiver into the core component of a functioning firearm once assembled with some additional parts. “Convert” means “to change or turn from one state or another: alter in form, substance or quality,” “to change or turn from one use, purpose, or function to another,” and “to remodel in order to accommodate to a new manner of operation or change from one type to another.”⁶⁴ “Readily” means “with fairly quick efficiency : without needless loss of time : reasonably fast : SPEEDILY” or “with a fair degree of ease : without much difficulty : with facility : EASILY.”⁶⁵

Using the most basic formulation from those dictionary definitions, a frame or receiver is a firearm if it can quickly and easily be completed for use in an

⁵⁸ Webster’s Third New International Dictionary of the English Language Unabridged 611, def. 1.d., 1.f., 1.g. (1965).

⁵⁹ See *United States v. Thomas*, No. 17-CR-00194, 2019 U.S. Dist. LEXIS 147264, at *12 (D.D.C. Aug. 29, 2019) (“the phrase ‘designed to’ broadens § 921(a)(3)’s reach beyond those weapons that ‘will’ expel a projectile: A weapon can be ‘designed to’ expel a projectile, even if it is inoperable.”).

⁶⁰ See *United States v. Rivera*, 415 F.3d 284, 286 (2d Cir. 2005) (citing cases).

⁶¹ *Id.*

⁶² *United States v. Dotson*, 712 F.3d 369, 370 (7th Cir. 2013).

⁶³ *Id.*

⁶⁴ Webster’s Third New International Dictionary of the English Language Unabridged 499, def. 1.b.(1), 1.c.(1), 1.c.(2) (1965).

⁶⁵ *Id.* at 1889, def. b, c.

assembled, operable firearm. Case law from the analogous federal definition of “machinegun” reinforces this point. Under the National Firearms Act, “machinegun” is defined to include weapons that are “designed to,” “can be readily restored to,” or be converted to be used as an automatic weapon.⁶⁶ A federal appeals court interpreted “readily” in this context to have a “temporal component of speed” and a “methodological component of ease.”⁶⁷ “Readily,” reasoned another appeals court, “describes a process that is fairly or reasonably efficient, quick, and easy, but not necessarily the most efficient, speedy, or easy process.”⁶⁸ Under this formulation, one court found that a cut-up M-14 receiver can be “readily restored” to operate as a machinegun where, according to an expert, it can be made to fire automatically with six hours of work.⁶⁹ A welded receiver of a Thompson submachine gun may be “readily” restored to shoot, another court found, where it would take “about an 8-hour working day in a properly equipped machine shop” to make it operable.⁷⁰

The ATF should employ the same type of common-sense reading and application of the statutory text when deciding if a frame or receiver is a firearm. Whether a firearm—or a frame or receiver of a firearm—can be “readily” “converted” to fire should be evaluated keeping in mind the context of time and effort. In fact, in criminal prosecutions, the ATF has already advanced the notion that ready convertibility is measured by the time and effort needed to create a functional firearm. A then-ATF agent, Richard Vasquez, testified as an expert in a 2004 federal criminal prosecution that a defendant’s starter gun could readily be converted to fire because “the gun could be converted by cutting off the barrel with a hack saw and opening up the cylinder holes with a [Dremel] tool.”⁷¹ Vasquez asserted that someone without specialized knowledge could convert the starter gun to fire in less than an hour, and that an expert could perform the conversion in a matter of minutes.⁷² The court agreed that the starter gun qualified as a firearm: “A gun that can be modified in the amount of time described by Vasquez may be considered ‘readily convertible.’”⁷³

In sum, using the plain meaning of “firearm” as defined under federal law requires that a frame or receiver be treated as a firearm if it is intended to be used

⁶⁶ A machinegun is a weapon “which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger” and includes “the frame or receiver of any such weapon, any part designed and intended solely and exclusively, or combination of parts designed and intended, for use in converting a weapon into a machine gun” 26 U.S.C. § 5845(b).

⁶⁷ *United States v. TRW Rifle 7.62x51mm Caliber*, 447 F.3d 686, 690 (9th Cir. 2006).

⁶⁸ *United States v. One TRW, Model M14, 7.62 Caliber Rifle*, 441 F.3d 416, 421-22 (6th Cir. 2006).

⁶⁹ *Id.* at 422-23.

⁷⁰ *United States v. Smith*, 477 F.2d 399, 400-01 (8th Cir. 1973).

⁷¹ *United States v. Mullins*, 446 F.3d 750, 755 (8th Cir. 2006).

⁷² *Id.*

⁷³ *Id.* at 756.

in an assembled, operable firearm or if it can be turned into an assembled, operable firearm without expending a substantial amount of time and effort. This description fits unfinished frames and receivers including the so-called “80%” frames and receivers that online sellers tout as quick and easy to complete while making that process even easier by providing instructional videos and other guidance to allow a buyer to have a fully-functional firearm in a few hours or less. The test for determining whether a frame or receiver constitutes a firearm should not be based arbitrarily on whether one aspect of work remains to finish the frame or receiver. Instead, to be consistent with the statutory framework, the test should look to whether the unfinished frame or receiver is clearly meant to be assembled into a firearm and how difficult and time-consuming the work is to do.

6. The current regulatory definition of “firearm frame or receiver” is outdated and non-functional.

A longstanding federal regulation promulgated by the ATF provides the following definition of “frame or receiver”:

Firearm frame or receiver. That part of a firearm which provides housing for the hammer, bolt or breechblock, and firing mechanism, and which is usually threaded at its forward portion to receive the barrel.⁷⁴

The ATF has not applied this definition in its determination letters (discussed in the next part). In fact, the definition has no utility for making determinations about whether a frame or receiver is a firearm or not. The definition is inadequate for describing actual frames and receivers. When the definition was proposed in 1968, the primary concern in defining frame or receiver was to clarify exactly which firearm component should be marked with the serial number and manufacturer name.⁷⁵

Not only is the existing definition largely useless, it may be dangerous. A federal judge recently found that an AR-15 lower receiver, even one that is already fully ready to be assembled into a functioning firearm, is not a firearm because of the wording of the definition in the regulation.⁷⁶ In the judge’s view, because an AR-

⁷⁴ 27 C.F.R. § 478.11.

⁷⁵ See Hearings In re: Determining the Suitability of Proposed Regulations to Implement Recently Enacted Legislation Concerned with Federal Regulation of Commerce in Firearms, Department of the Treasury, Internal Revenue Service, Statement by Robert C. Zimmer, Sporting Arms and Ammunition Manufacturer’s Institute, at 23 (Nov. 21, 1968); *id.* Statement of Charles Steen, Sarco, Inc., at 133.

⁷⁶ Tentative Minute Order re Post Trial Motions, *U.S. v. Roh*, No. 14-CR-00167 (C.D. Cal. 2019), available at <http://www.cacd.uscourts.gov/sites/default/files/documents/JVS/TR/Roh%2C%20Ruling%20on%20R%2029%20Motion.pdf>.

15 lower receiver “does not contain a bolt or breechlock and is not threaded to receiver the barrel,” it may not be considered a firearm under federal law.⁷⁷

Regardless of whether this reasoning is persuasive, it is alarming that the ATF has allowed the current definition to stand unamended for so long given the definition’s imperfect fit with the core building block of the most popular semiautomatic rifle in the country: the AR-15. If this court’s view is more widely accepted, all AR-15 lower receivers, even receivers that are fully ready to be assembled into an operable firearm, would be unregulated.

7. The ATF’s determination letters are flawed, erroneous, and arbitrarily and capriciously narrow.

Although the ATF has not issued definitive interpretations on the matter, dating back to at least the 1980s, ATF has issued numerous determination letters to businesses determining whether a particular frame or receiver is a firearm under the law.⁷⁸ These rulings reveal that, over time, the agency has exhibited a decreasing interest in applying the definition of firearm according to its plain terms in favor of drawing arbitrary technical distinctions about what is a firearm and what is not. And none of the publicly available rulings meaningfully applied the agency’s unhelpful definition of “firearm frame or receiver” described above.

The ATF’s approach towards regulating frames and receivers has always been highly technical, but the ATF’s earlier rulings correctly weighed the ease and speed with which a receiver could be turned into a functioning firearm to determine whether the frame or receiver met the federal definition of firearm.⁷⁹ In a 1983 determination letter, the ATF determined that an AR-15 receiver sample was “identifiable as the receiver of a firearm. It is basically complete except that the interior cavity has not been milled.”⁸⁰ The agency noted that the cavity itself was easy to mill in a relatively short amount of time: “For test purposes, the interior of the sample was drilled out using a 5/8 inch drill and then finished with a 1/2 inch rotary file. Approximately 75 minutes time was required to make the receiver functional.”⁸¹ Therefore, the ATF explained, “the unfinished receiver . . . is still a

⁷⁷ *Id.* at 4.

⁷⁸ Everytown has all determination letters included in the compiled administrative record filed in *Cal. Rifle & Pistol Assoc. Inc. v. Bureau of Alcohol, Tobacco, Firearms, and Explosives, et al.*, No. 14-CV-01211 (E.D. Cal. Jan. 9, 2015). In June 2018, Everytown submitted a FOIA request for all determination letters on this matter issued since January 1, 2004, but has not yet received documents in response.

⁷⁹ *Id.*

⁸⁰ Letter from Edward M. Owen, Jr., Chief, Firearms Technology Branch, ATF, to Henry A. Roehrich, SGW Incorporated (May 3, 1983).

⁸¹ *Id.*

firearm subject to the [law].”⁸² The ATF essentially repeated this analysis in a 1992 private letter determining that an AR-15 receiver sample qualified as a firearm.⁸³

A decade later, in 2002, the ATF cited the time needed to finish an AR-15 lower receiver—75 minutes in the 2002 determination letter—in determining that the receiver was a firearm.⁸⁴ In 2004 the ATF similarly used the time needed to make a functioning firearm in determining whether a pistol frame constituted a firearm. In that letter, the ATF determined that a 1911-type pistol frame was a firearm even though slide rails had yet to be cut because “[a]lthough critical, this work can be completed in a minimal amount of time by a competent individual having the necessary equipment.”⁸⁵

However, by 2006, the ATF dropped any temporal component in its classification determinations. Instead, the ATF indicated that it would determine whether a receiver constitutes a firearm based on a purely technical distinction, advising that “an AR-15 type receiver which has absolutely no machining performed in the area of the trigger/hammer recess might not be classified as a firearm.”⁸⁶ The letter continued, “Such a receiver could have **all** other machining operations performed, including pivot pin and takedown pin hole(s) and clearance for the takedown pin lug, but must be completely solid and un-machined in the trigger/hammer recess area.”⁸⁷ With this, the ATF effectively announced that as long as the trigger group area of an AR-15 receiver is solid, the receiver would not be considered a firearm, no matter how easily and quickly that receiver can be turned into a firearm. The ATF did not provide any justification for its regulatory shift and it never squared its new way of thinking with the statutory definition of firearm.

By 2009, the ATF had fully implemented its new position, classifying an AR-15 type receiver-casting as *not* a firearm where the fire-control cavity had not been milled and the fire-control component pivot-pin holes had not been drilled.⁸⁸ A receiver was a firearm, the ATF announced, only if the receiver “possessed either pivot pin holes or indexing marks for the firearm control components (trigger group), or, if any of the cavity for the trigger group has been milled”⁸⁹ In

⁸² *Id.*

⁸³ Letter from Edward M. Owen, Jr., Chief, Firearms Technology Branch, ATF, to Robert Bower, Jr., Philadelphia Ordnance, Inc. (May 25, 1992).

⁸⁴ Letter from Curtis H.A. Bartlett, Chief, Firearms Technology Branch, ATF, to Lane Browne, Mega Machine Shop, Incorporated (Dec. 27, 2002).

⁸⁵ Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF, to Robert Serva, Dan Wesson Firearms (Aug. 19, 2004).

⁸⁶ Letter from Sterling Nixon, Chief, Firearms Technology Branch, ATF to Justin Halford (Apr. 24, 2006) (underlining in original).

⁸⁷ *Id.* (bold in original).

⁸⁸ Letter from John R. Spencer, Chief, ATF, to Chris Coad, Ultra-Tech, Inc. (May 20, 2009).

⁸⁹ Letter from John R. Spencer, Chief, Firearms Technology Branch, ATF, to Rick W. Miller, G&S Precision Machine (July 24, 2009).

subsequent years, ATF has reaffirmed this purely technical analysis,⁹⁰ and applied it to its decisions classifying pistol frames as non-firearms.⁹¹ Still, the ATF has never explained how its decision-making conforms with the statutory definition of firearm.

The ATF has reached its current approach toward the regulation of frames and receivers without regard for the text and legislative intent behind the federal law. That failure to ground its reasoning within the confines of the definition of firearm itself constitutes an enormous and dangerous error. The ATF's current approach is arbitrary: it ignores the law and offers no explanation of its position.

8. As it did with bump stocks, the ATF should correct its position on the regulation of unfinished frames and receivers.

The ATF's more recent determination letters erroneously and dangerously ignore the statutory text that should guide its determinations about when a frame or receiver is a firearm. But the ATF's position as expressed through these rulings is not permanent. As the ATF recognizes, this type of ruling, although reflecting "the agency's official position" is "subject to change if later determined to be erroneous or impacted by subsequent changes in the law or regulations."⁹² An agency's initial statutory interpretation "is not instantly carved in stone," as the Supreme Court has explained.⁹³ Courts defer to the ATF's judgment in making determinations of this kind only if the ATF's interpretation of the underlying statute is "persuasive."⁹⁴

Very recent history relating to bump stocks shows that the ATF can and should issue rules to correct flawed determination letters like these. Only a year ago, the ATF amended its regulations to fix positions taken in determination letters that lacked grounding in the text and history of the applicable law. A decade of determination letters had concluded that bump stock devices were not machineguns under the National Firearms Act ("NFA"). In reversing those determinations, and issuing a final rule classifying bump stocks as machineguns, the ATF noted that those determination letters lacked "extensive legal analysis related to the definition of 'machinegun.'"⁹⁵ The determinations lacked consistency and substantial analysis

⁹⁰ See, e.g. Letter from Earl Griffith, Chief, Firearms Technology Branch, ATF, to Bradley Reece, Palmetto State Defense, LLC (Nov. 22, 2013) (classifying an AR-15 receiver as not a firearm because the sample had "no machining of any kind performed in the area of the trigger/hammer recess").

⁹¹ Letter from John R. Spencer, Chief, Firearms Technology Branch, ATF, to Alan Aronstein, Hi-Standard Manufacturing Company (Sept. 23, 2012).

⁹² ATF, *National Firearms Act Handbook – Chapter 7, § 7.2.4.1*, available at <https://www.atf.gov/firearms/docs/undefined/atf-national-firearms-act-handbook-chapter-7/download>.

⁹³ *Nat'l Cable & Telecomms. Ass'n v. Brand X Internet Servs.*, 545 U.S. 967, 981 (2005) (quoting *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 863 (1984)).

⁹⁴ *Innovator Enters. v. Jones*, 28 F. Supp. 3d 14, 24 (D.D.C. 2014).

⁹⁵ Bump-Stock-Type Devices, 83 Fed. Reg. 66514 (Dec 26, 2018).

and relied on technical analysis divorced from the NFA's text and purpose.⁹⁶ So too here, the ATF should reconsider its flawed determination letters so that unfinished frames and receivers may be regulated as firearms wherever they are designed, intended, marketed or readily may be converted into functioning firearms.

9. Proposed rulemaking.

There is a simple and straightforward way to correct the ghost gun regulatory. By adding specificity to the definition of the term "firearm frame or receiver," the ATF can make clear that an unfinished frame or receiver recognizable as the essential building block of a firearm is covered as a firearm under federal law.

Specifically, Everytown calls on the ATF to amend the definition of "Firearm frame or receiver" in 27 C.F.R. § 478.11 as follows, with added text underlined and deleted language struck-through:

Firearm frame or receiver. That part of a firearm which provides housing for the ~~hammer, bolt or breechblock, and firing mechanism,~~ and which is usually threaded at its forward portion to receive the barrel trigger group, including any such part (1) that is designed, intended, or marketed to be used in an assembled, operable firearm, or (2) that, without the expenditure of substantial time and effort, can be converted for use in an assembled, operable firearm.

This proposed definition is broad enough to apply to any unfinished frame or receiver that can be turned into a functioning firearm by a non-expert with widely available tools and without expending substantial time and effort. The proposed definition is also sufficiently precise to guide the ATF in drawing a distinction between a frame or receiver that qualifies as a firearm on the one hand and, on the other hand, a firearm frame that is not meant to be part of a functioning firearm. AR-15 lower receivers would be covered because the definition does not limit receivers to those that provide housing for the hammer, bolt, or breechlock and are threaded to receive the barrel.

The proposed definition offers a common-sense and straightforward solution to the current ghost gun problem. Any person who wishes to buy a lower receiver or a complete build-your-own handgun kit will simply need to take the same basic steps to make a purchase that they would need to take to buy a complete firearm, including visiting a local gun dealer to undergo an instant background check. This procedure represents a very insignificant burden to a hobbyist who enjoys building

⁹⁶ *Id.* at 66518.

their own firearms: 99 percent of Americans live within 10 miles of a gun dealer.⁹⁷ Federally licensed dealers already sell serialized lower receivers for those who wish to build their own firearms, and background checks are already conducted on these sales. This distribution method also ensures that every frame or receiver destined for conversion into an operable firearm will have a serial number, allowing for tracing and investigation if the weapon ends up being used in illegal trafficking or other criminal activity.⁹⁸

Everytown urges the ATF to issue a notice of proposed rulemaking to adopt this amendment as soon possible. In the event ATF denies this petition, Everytown expects that ATF will explain its grounds for denial, as the Administrative Procedure Act requires,⁹⁹ allowing further legal action to be taken.

Respectfully submitted,



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⁹⁷ Everytown, *99% of Americans Live Within 10 Miles of a Gun Dealer* (Feb. 25, 2019), <https://everytownresearch.org/99-americans-live-within-10-miles-gun-dealer/>.

⁹⁸ See, e.g., Plea Agreement, *U.S. v. Cooper*, 18-CR-00099, at 2-3 (W.D. Ky. Jan. 1, 2019) (dealer notified law enforcement regarding multiple sales of finished lower receivers on four occasions, leading ATF to investigate defendant's online trafficking operation).

⁹⁹ See 5 U.S.C. § 555(e) ("Prompt notice shall be given of the denial in whole or in part of a written application, petition, or other request of an interested person made in connection with any agency proceeding. Except in affirming a prior denial or when the denial is self-explanatory, the notice shall be accompanied by a brief statement of the grounds for denial.").